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ABSTRACT

Many boards of education have attendance policies imposing grade reductions and/or loss of credit on students with unexcused absences. This paper reviews state legislative action on the subject, specific court cases, and the interpretations of statutes and practices by attorneys general and commissioners of education. Most states have general school attendance laws, while some states defer to local districts. The issue has become more prominent, and recently some state legislatures have mandated specific attendance requirements for receipt of credit. A grade reduction policy tied to truancy appears to be on a much stronger legal foundation than grade reductions for other infractions. The severity of the penalty must be reasonable. If there is a great disparity between the sanction and the misconduct, it may be considered as a denial of student rights. Local districts must have statutory authority to enact attendance policies denying credit for student absences. School districts must also be careful not to violate the free exercise of religion when enforcing attendance policies. Parents do not have unconditional rights to absent their children for educational trips in contravention of school district policy. Six guidelines are provided for developing local attendance policy that will satisfy both the courts and the local community. (MD)

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ACADEMIC PENALTIES FOR ATTENDANCE REASONS

From the time they enter the public school system until they leave, students' performance is judged, pondered, tested, and appraised. Each of these evaluations focuses on two aspects of student life: academic progress and behavior. Yet, as any educator is aware, no impenetrable wall exists between the two categories. On the contrary, the distinction between academic problems and misbehavior is frequently blurred and indistinct.

This Legal Memorandum will examine one aspect of the relationship between pupil evaluations and disciplinary action, that of grade reductions or loss of credit for failure to meet attendance requirements.

In recent years, many boards of education have implemented attendance policies which impose grade reductions and/or loss of credit on those students who are not in attendance. Many discussions have occurred at both the district and the state levels regarding the legal and philosophical issues of whether a student's grade should be based solely on homework and test scores, or whether the grade should also reflect effort as demonstrated by attendance. More and more educators and legislators are proposing that grades should be lowered and credit withheld because of excessive or unexcused absence.

The attempt to use academic penalties for purposes other than direct evaluation of academic performance has led to an increasing number of court cases in recent years, and the legal debate has involved fundamental constitutional rights as well as searching evaluations of the function of American schools.

There has also been considerable state legislative action on this subject, as well as interpretation of both statutes and practices by attorneys general and commissioners of education. This Memorandum will attempt to provide an overview of all these aspects of the legal issues involved.

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STATE LEGISLATION

Compulsory Attendance

Most state constitutions affirm the importance of free education and recognize the need for general attendance laws. As an example, Article I, Sec. 14.30010 of Alaska's statutes requires that:

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> Every child between seven and sixteen years of age shall attend school at the public school in the district in which the child resides during each school term. Every parent, guardian or other person having the responsibility for or control of a child between seven and sixteen years of age shall ensure that the child is not absent from attendance.

Similar directives are provided in the statutes, rules, or regulations of our other states. Unfortunately, these broadly written directives provide little guidance to school officials who are considering instituting specific attendance policies.

Local Board Discretion

Some state legislative bodies have recognized the importance of the attendance issue, but defer entirely to the local district to enact specific policies. Such is the case in Arizona, California, Connecticut, Delaware, Idaho, Iowa, Kansas, Louisiana, Maryland, Missouri, Montana, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Oregon, Pennsylvania, Rhode Island, Utah, Washington, and Wyoming.

Other state legislative bodies have given less leeway to the local district. Arkansas, for example, enacted changes in its compulsory school attendance laws (through Act 60) which provide that local districts may adopt student attendance policies, provided that:

> Excessive absences shall not be a mandatory basis for denial of promotion or graduation but shall be considered with other factors including, but not limited to, reasons for absences, performance on standardized tests, and grades earned during the school year.

In Colorado, the recently passed State Bill No. 192 requires each of the 180 local school districts in the state to have a written policy setting forth attendance requirements.

Oklahoma's State Board of Education is studying the possibility of limiting the number of class periods a student may miss and still remain eligible for participation in cocurricular activities. One guideline these officials are using is the requirement of the Oklahoma Secondary School Activities Association that students be in attendance 80 percent of the semester in order to participate in activities approved by the Association.

In Michigan, Antonio Flores, coordinator for the Department of Education, advises that local school districts are authorized by state law to regulate student attendance and to consider such attendance in determining a student's grade in a course.

South Dakota's State Board of Education enacted legislation requiring that all 195 school districts in the state have a plan of school attendance on file. While the form of these plans could vary with each district, State Superintendent James Hansen gave some direction when he said, "There is no doubt in my mind that student attendance is crucial for achievement and that low attendance normally produces low achievement."

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Statewide Requirements

The attendance policy issue has become of such concern that in the past year several state legislative bodies have enacted statutory changes which mandate specific attendance requirements students must fulfill in order to receive credit.

The Texas legislature, for example, amended Section 21.041(a) of the Texas Education Code to read as follows:

> A student may not be given credit for a class if the student has more than five days of unexcused absence during a semester.

In Florida a similar statute was passed:

> No student shall be awarded a credit who has not been in attendance for instruction for a minimum of 135 hours unless the student has demonstrated mastery of the student performance standards in the course of study as provided by rules of the district school board.

The South Carolina legislature recently enacted the Education Improvement Act which specified, among other things, that a high school student must be in attendance at least 85 out of 90 days in a semester class, or 170 out of 180 days in a full year class in order to receive credit.

> Any student who attends a class fewer than 85/170 days in the instructional period shall not be eligible to receive credit in the class unless the local school board grants approval for each excessive absence in accordance with local board policy.

Tennessee educators and legislators have been studying the issue of student attendance for a number of years. In 1981 the legislators passed Senate Bill No. 361 which provided that the state establish minimum attendance requirements or standards as a condition for passing a course or grade. In 1984 legislators prescribed guidelines for local boards of education to include when establishing standards and policies governing student attendance, such as maintaining effective accounting and reporting procedures, allowing for extenuating circumstances, and providing an appeals process.

The 1984 session of the Arizona legislature also addressed the issue of student attendance and its relationship to grades. Through amendments to Section 15-843 of the Arizona Revised Statutes, local districts were required to include "Penalties for excessive pupil absenteeism including failure in a subject, failure to pass a grade, suspension or expulsion."

A similar legislative act amended Section 2.22-33-104 of the Colorado statutes to read as follows:

> The board of education shall adopt a written policy setting forth the district's attendance requirements. Said policy shall provide for excused absences, including those listed as exclusions from compulsory school attendance.... An attendance policy developed

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pursuant to this section may include appropriate penalties for non-attendance due to unexcused absence, including, but not limited to, the imposition of academic penalty for classes missed while unexcused.

Limited Powers Given to Local Districts

New Jersey's statutes do not address the specific issue of assessing penalties for absences; however, case law decisions in that state prohibit the lowering of grades as a punishment for poor attendance.

Wisconsin and New York provide more clear-cut directions for their local boards of education to use in instituting attendance policies. Wisconsin Statute 118.16 requires school districts to have written attendance policies which specify acceptable reasons for absence from school. This statute further mandates that "no public school may deny a pupil credit in a course or subject solely because of the pupil's unexcused absences from school."

New York's policy, as set forth in a ruling of the Commissioner of Education in Matter of Shamon 22 Ed. Dept. Rep., Decision No. 11022, states that:

> Denial of academic credit may not be premised solely upon whether or not a student's absence is excused. Such a policy is logically inconsistent, in that students who have "excused" absences have equally missed "necessary" work which ought to have been made up in some other fashion to avoid loss of credit or reduction in a grade. If a board of education desires to establish a minimal attendance requirement before credit will be granted...it must do so without distinguishing between excused and unexcused absences.

THE JUDICIAL APPROACH

Under the usual judicial approach, a board of education has "only that power to make rules and regulations over student conduct and status which are directly related to its function of evaluating the pupils in its charge," as stated in Jacobs v. Benedict, 301 N.E. 2d 723 (Ohio Ct. Comm. Pleas 1973). Therefore, a school district must be prepared to show that a reasonable and rational relationship exists between a rule it promulgates and the furtherance of an educational purpose.

As early as the turn of this century, courts justified differing procedural requirements for decisions to suspend or dismiss a student for academic reasons from similar actions for disciplinary purposes. The basis for this difference is the belief that misbehavior "is a very different matter from failure to attain a standard of excellence in studies," according to Barnard v. Inhabitants of Shelburne, 102 N.E. 1095 (Mass. 1913). Courts have also recognized that, unlike disciplinary proceedings, academic matters are outside the area of expertise of most judges. The courts have, therefore, generally deferred to professional educators if the issue was one of academic policy as indicated in Goss v. Lopez, 419 U.S. 565 (1975).

For this reason, too, a grade reduction policy tied to truancy appears to be on a much stronger legal foundation than grade reductions used for other kinds of behavioral infractions. Educators may convincingly contend after all that

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the presence of a student in the classroom on a reasonably regular basis is necessary to ensure that the student derives maximum benefit from the course, including the opportunity for interaction with teachers and peers. It is much more difficult to persuade a court that students caught smoking in a lavatory during lunch period should lose points in courses in which they have fully participated.

Grade Reductions as a Disciplinary Penalty

A recent Pennsylvania appeals court in Katzman v. Cumberland Valley School District, 479 A. 2d 671 (Pa. Cmwlth. 1984) demonstrates this line of reasoning. School officials wanted to penalize a student by reducing her marking period average by 10 points in all subjects because she admitted to drinking a glass of wine on a field trip. In ruling for the plaintiff, the court reasoned that "one would hardly deem acceptable an upgrading in a mathematics course for achievement on the playing fields."

In a case based on similar circumstances, however, a Texas court reached a contrary conclusion. In New Braunfels Independent School District v. Armke, 658 S.W. 2d 330 (Tex. App. 1983), the appeals court found that a school district could reduce grades for students who were suspended for three days as a punishment for consuming alcoholic drinks on a school-sponsored field trip.

Severity of the Penalty

Even if the connection between an action and the penalty for it is a reasonable one, courts may still consider the sanction to be a deprivation of a student's rights if there is a great disparity between the severity of the sanction and the nature of the misconduct. This is often referred to as a denial of "substantive due process." This was the issue in Knight v. Board of Education, 348 N.E. 2d 299 (Ill. App. 1976).

The court agreed with the plaintiff that the board's rule under which a student could have his course grade reduced by one letter for each day of unauthorized absence was "harsh." The court found the constitutionality of the rule to be moot, however, because the board had since rescinded its rule and had not fully applied it to the plaintiff's situation. Instead, his grades had been reduced by one letter grade for only one quarter of the year (in three courses) in consequence of two days of truancy. The court did not find this punishment to be "so harsh as to deprive him of substantive due process."

While "substantive due process" language is not always used, courts are even more apt to overrule school disciplinary actions which seriously interfere with a student's receipt of academic credit if the result of the action is more serious than mere grade reduction. One early case illustrating this inclination is Valentine v. Independent School District of Casey, 183 N.W. 434 (1921) in which the court refused to uphold a board's denial of a diploma to a student who had satisfied all academic requirements but refused to wear a cap and gown at graduation.

In another case, State ex rel Sageser v. Ledbetter, 559 S.W. 2d 230 (Mo. App. 1977), the student plaintiff was not allowed to graduate because of an attendance rule requiring attendance for eight semesters in order to receive a

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diploma. While this rule was not found to be unreasonable per se, its application was where several other students had been allowed to graduate after absences of several weeks or even a semester, and where the plaintiff had admittedly met all other requirements for graduation.

In Donaldson v. Board of Education, 424 N.E. 737 (Ill. App. 1981), the court held a three-day suspension of a pupil during an exam period resulting in reduced grades was not unduly harsh. In reaching its decision, the court considered the following facts relevant: the purpose of the suspension was not to prevent test-taking but to impress immediately upon the student the error of his ways; the timing of the punishment was dictated by the date of the misconduct; the suspension was not during the final exams (which would have had a disastrous effect on the student's grades); and the student was in junior, not senior, high school so grades were of less importance.

A further indication that courts will not overturn academic penalties related to absence unless the sanctions are grossly unfair is found in the case of Raymon v. Alvord Independent School District, 639 F. 2d 257 (5th Cir. 1981). Here a student brought suit because three points were deducted from her algebra grade due to an unexcused absence. The federal circuit court dismissed the claim as insubstantial, noting that the student's overall grade point average was decreased by less than one-tenth of a point, and the girl retained her rank as second in the class.

Lack of Statutory Authority

In Colorado, a school district denied credit for the semester to any student with more than seven absences even if the absences were excusable for illness or injury. However, the state compulsory education statute provided for students to be in attendance for 172 days to gain credit except when ill or suspended, and the school board's attendance statute was held to interfere with that policy (Gutierrez v. S.D. R-1, 585 P. 2d 935 Colo. Ct. of App. 1978). It was as an apparent result of this decision that the Colorado legislature subsequently amended the governing statute to specifically provide for the use of academic penalties for unexcused absence. See page 3 infra.

In another very recent case in which only general guidelines were given to school districts on the scope of their disciplinary authority to deal with absence, the Connecticut Supreme Court ruled in Campbell v. Board of Education of the Town of New Milford, 475 A. 2d 289 (Conn. 1984) that a district could withhold credit and reduce grades for excessive absenteeism.

In a unanimous decision (5-0), the court agreed that academic credentials (grades and credits) should reflect more than the grades received on quizzes, examinations, and homework. In reaching this conclusion, the judges further noted that the plaintiff, who missed many days in his junior year, "had no difficulty meeting attendance requirements in his senior year and graduated with his class in timely fashion." On the strength of this ruling, many of the 169 towns in Connecticut have instituted attendance policies which assess academic penalties for unexcused or excessive absenteeism.

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Absence for Religious Reasons

An interesting Texas case, Church of God v. Amarillo Independent School District 511 F. Supp. 613 (1981), discussed the right of students to participate in religious holidays without being penalized academically. The school attendance policy limited the number of excused absences for religious holidays to two per year, after which students received zeros for the days on which they had unexcused absences for religious observance.

The plaintiff church claimed this policy violated its members' right to free exercise of religion and denied them due process because a fundamental tenet of their church was that members abstain from secular activity on seven holy days and also attend a seven-day religious convocation on the Feast of the Tabernacle.

The court observed that restricting students to two religious days placed them in the position of "abandoning a tenet of their religion or suffering a penalty for the classwork missed," and determined that:

> The loss of grades in this case not only imposes a substantial impact upon the Plaintiffs' academic records unrelated to their actual level of achievement, but also places a stigma on the students for abiding by their religious belief.

Because of these compelling arguments, the court ruled that the Amarillo Independent School District attendance policy did violate the free exercise of religion as guaranteed by the first and fourteenth amendments and that the district must accommodate the plaintiff's religious beliefs.

RIGHTS OF PARENTS

Commonwealth of Pennsylvania v. John Hall and Sherrie Hall, 455 A. 2d 674 (1983) concerned whether the defendant parents were guilty of four counts of truancy at a cost of $2.00 per conviction. The Halls had taken their children on several week-long "educational trips" during the school year despite the fact that the district attendance policy allowed for only one trip per year, not to exceed five school days. Both the Court of Common Pleas and the Superior Court agreed that the district policy was reasonable, and had been applied in a consistent manner. The court wrote:

> The parents' assertion of an unconditional right to take their children on multiple educational trips in contravention of school district policy is without foundation in logic or in law. Continuity in a course of study through requirements which reasonably compel regular school attendance is a matter of paramount importance to which the views of individual parents must yield.

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CONCLUSIONS AND GUIDELINES

Whether legislative action encourages or prohibits the policy of reducing grades or withholding credits for excessive or unlawful absenteeism, one observation is clear: the issue is being debated in numerous state houses and in local districts across the country.

In preparing a local policy that will satisfy both the courts and your local school community, these guidelines may prove useful:

1. Before instituting any policy, examine state statutes and appropriate court cases to determine whether academic penalties may be imposed for absenteeism. Also, read opinions from the attorney general and commissioner of education from your state to see if any directives have been given on this matter.

2. Contact other superintendents in your state who may have instituted attendance policies. Their experiences may prove invaluable to you.

3. If you attempt to institute an attendance policy, publicize your intention to the community so that you may judge its receptivity to the idea. Without the support of your board of education, faculty, parents, and the community in general, the policy will almost certainly be ineffective.

4. Form a broad-based ad hoc committee to assist in developing the policy. Make sure that the intent of the policy is clearly stated to be educational in nature rather than disciplinary.

5. Make sure that the penalties to be imposed for excessive absence are not so harsh or severe as to be a denial of "substantive due process."

6. Once the policy is established, review it to ensure that procedural due process is provided. It should contain these steps and safeguards:

   a) Prior to its enactment, notice of the rules, regulations, and penalties are provided to students and parents. A good way to accomplish this is to explain the policy at parent meetings and at student assemblies.
   b) All students receive a written copy of the policy. Make sure that students who arrive during the school year also receive the policy.
   c) The policy is enforced by all in a fair, consistent, nondiscriminatory manner.
   d) The policy provides for exceptions through an impartial hearing and appeals process.

This Legal Memorandum was prepared by Thomas J. Pepe, superintendent of schools, Windham, Conn.; Alice L. Tufts, director of instruction, Windham, Conn; and Ivan B. Gluckman, general counsel, NASSP.

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